

1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT PART 11

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, IND./SCI NO.
167N-05

5 -against-

TRIAL

6 MARK ORLANDO,

Defendant.

7 - - - - -X

8 262 Old Country Road
9 Mineola, New York
10 June 14, 2005

11
12 B e f o r e :

13 HON. DAVID P. SULLIVAN, Supreme Court Justice

14 A p p e a r a n c e s :

15
16 HON. DENIS DILLON
District Attorney, Nassau County
17 By: ROBERT T. HAYDEN, ESQ.
Assistant District Attorney

18
19 DENNIS LEMKE, ESQ.
Attorney for Defendant
20 114 Old Country Road
21 Mineola, New York

22
23 Mary Ocskai
Official Court Reporter

24
25 **COPY**

Proceedings

1 THE CLERK: Case on trial, 167N-2005, People
2 of the State of New York versus Mark Orlando.

3 People ready.

4 MR. HAYDEN: Ready, Your Honor.

5 THE CLERK: Defense ready.

6 MR. LEMKE: Yes, Your Honor.

7 THE CLERK: Let the record reflect the
8 presence of Mr. Orlando. The jury and alternates are
9 not present.

10 THE COURT: The court in receipt of a note we
11 have marked as Court exhibit number XIII. Can we use a
12 sweat shirt a juror has brought with them?

13 The Court is going to answer that no.

14 Mr. Lemke, did you want to be heard.

15 MR. LEMKE: Obviously I think the answer is no
16 regarding that, but I am renewing my application once
17 again on, certainly on June tenth, last Friday, I
18 believe I strenuously objected to this mannequin, this
19 dummy being brought in. There's argument heard, the
20 Court overruled my objection and indicated it's for
21 demonstrative purposes and, therefore, you're letting
22 the jury have this, which was a project, it's an
23 exhibit, in for the jury to consider and to look at.
24 During testimony, Mr. Hayden, especially on redirect,
25 went over to the dummy and pulled up the sweat shirt and

Pages 954 & 955
missing

(Never received
from defense
counsel)

Proceedings

1 MR. HAYDEN: No, Your Honor.

2 THE COURT: Court has Court's exhibit number
3 XIV that's just been handed to me. Another note. The
4 jury would like the phone records from LA Fitness from
5 defendant to Bobby C, or victim. Whatever
6 correspondence said from Herva Jeannot after search
7 warrant. Also what was found in defendant's home.
8 Criminalistics testimony, Scott Kovar, Tom Flores
9 testimony, Barbara Diamant's testimony.

10 So, when I bring them out to answer their first
11 request in the negative, I will tell them we will
12 provide them with what we have in evidence pursuant to
13 their request and we will take some time to find the
14 specific testimony they're requesting.

15 Is that acceptable?

16 MR. LEMKE: Yes.

17 THE COURT: Any objections you made, Mr.
18 Lemke, of course, are noted.

19 Can we get them out here.

20 THE COURT: Case on trial, indictment 167N-05,
21 People of the State of New York versus Mark Orlando.

22 People ready.

23 MR. HAYDEN: Ready, Your Honor.

24 THE CLERK: Defendant.

25 MR. LEMKE: Defendant ready.

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1 THE CLERK: Let the record reflect the
2 presence of the defendant, jurors and alternates.

3 THE COURT: Good morning, everyone.

4 I have two notes. First one is marked Court
5 exhibit number XIII. Can we use a sweat shirt that a
6 juror has brought with them. The answer to that is no.

7 I have another note marked Court exhibit XIV, phone
8 records from LA Fitness from defendant to Bobby C. What
9 was confiscated from Herva Jeannot's home after search
10 warrant. Also what was found in defendant's home.
11 Criminalistics testimony, Scott Kovar, Tom Flores and
12 Barbara Diamant's testimony.

13 What I am going to provide you is with whatever
14 records or tangible evidence you have requested, and
15 then we're going to take a few minutes, some time to get
16 the specific testimony you requested. Then I will bring
17 you back and have that read back to you. Okay.

18 Thank you.

19 One other thing, excuse me. Just want to
20 reiterate, you must not read or listen to any accounts
21 or discussions of the case in the events that it is
22 reported by newspapers or other media.

23 You can follow the officer.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

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1 THE COURT: At this time we're going to
2 endeavor to get the proper testimony to be read back to
3 the jury. That would take some time and then we will
4 reconvene and have it read back to the jury.

5 Mr. Lemke, Mr. Hayden, do you want to step up.

6 (Whereupon, there was a discussion held off
7 the record.)

8 THE CLERK: The Court will be in recess.

9 (Jury deliberations.)

10 THE CLERK: Case on trial, indictment 167N-05,
11 People versus Mark Orlando.

12 People ready?

13 MR. HAYDEN: People ready?

14 THE CLERK: Defendant ready?

15 MR. LEMKE: Ready.

16 THE CLERK: Let the record reflect the
17 presence of Mr. Orlando. The jury and alternates are
18 not in the courtroom.

19 THE COURT: All right. Go get them.

20 THE COURT: Counsel, I'm going to have the
21 read back of the testimony they requested. We're going
22 to read back the testimony requested, Detective Kovar,
23 Flores and Diamant, and then their lunch will be here.
24 Then we will get the specific items recovered and give
25 that to them in a little bit.

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1 THE COURT OFFICER: Ready for the jury.

2 THE COURT: Yes.

3 THE COURT OFFICER: Jury entering.

4 THE CLERK: Case on trial, indictment
5 167N-05, People versus Mark Orlando.

6 People ready.

7 MR. HAYDEN: Ready, Your Honor.

8 THE CLERK: Defendant ready?

9 MR. LEMKE: Yes.

10 THE CLERK: Let the record reflect the
11 presence of Mr. Orlando, the sworn jurors and
12 alternates.

13 THE COURT: Good afternoon. Thank you for
14 your patience. We have now been able to get together
15 the testimony you requested from Detective Kovar, Tommy
16 Flores and Barbara Diamant. I gave you what evidence we
17 have. With respect to what was seized from the
18 defendant's house and Herva Jeannot's, we're going to
19 give the read backs of testimony with respect to that as
20 well but the court reporter has to find that. Right now
21 I will give you the three witnesses you requested and
22 then I will let you go back to your room. Then we will
23 get the specific answer to the questions for you read
24 back, what was confiscated from Herva Jeannot and the
25 defendant's room. Okay.

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1 (Whereupon, the requested testimony was read back
2 by the court reporter.)

3 THE COURT: Okay. With respect to the twelve
4 deliberating jurors, we're going to have you go back now
5 to the deliberating room. I am going to then get for
6 you specifically the items confiscated from Herva
7 Jeannot's home after the search warrant. Also what was
8 found at the defendant's home. We will bring you back
9 out and tell you what it was.

10 Okay. As far as the alternates, same admonitions.
11 You can't discuss the case among yourselves or with
12 anyone else. Okay.

13 Please follow the officers.

14 (Jury deliberations.)

15 THE CLERK: Call the case outside the presence
16 of the jury.

17 Continue case on trial, indictment 167N-2005,
18 People of the State of New York versus Mark Orlando.

19 People ready?

20 MR. HAYDEN: Ready, Your Honor.

21 THE CLERK: Defense ready.

22 MR. LEMKE: Defense ready.

23 THE CLERK: Let the record reflect the
24 presence of Mr. Orlando. The jury is not in the
25 courtroom at this time.

Proceedings

1 THE COURT: Any applications prior to the jury
2 coming in?

3 MR. LEMKE: None.

4 MR. HAYDEN: No.

5 THE COURT: Court received a note. Court has
6 marked it Court exhibit XV. It indicates that they no
7 longer need to deliberate, and they have reached a
8 verdict.

9 Again, I admonish everybody on the record as well
10 not to disrupt the proceedings in any way whatsoever
11 otherwise you will have to be removed from the
12 courtroom.

13 THE COURT OFFICER: Ready.

14 THE CLERK: Yes.

15 THE CLERK: Ready for the jury?

16 THE COURT OFFICER: Jury entering.

17 Case on trial, 167N-05, People of the State of New
18 York versus Mark Orlando.

19 People ready to proceed?

20 MR. HAYDEN: Ready, Your Honor.

21 THE CLERK: Defendant ready?

22 MR. LEMKE: Yes, ready, Your Honor.

23 THE CLERK: Let the record reflect the
24 presence of Mr. Orlando, jurors, and the alternates.

25 THE COURT: Court has received a note from the

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1 forelady indicating that they no longer need to
2 deliberate and have reached a verdict. I marked it
3 Court exhibit XV.

4 I will ask the clerk to take the verdict.

5 THE CLERK: Madam foreperson, has the jury
6 agreed upon a verdict?

7 A JUROR: Yes.

8 THE CLERK: Will the foreperson please rise.

9 As to the single count in the indictment, Murder in
10 the Second Degree, violation of Penal Law Section
11 125.25(1), how do you find the defendant, guilty or not
12 guilty?

13 THE WITNESS: Guilty.

14 THE COURT: Quiet.

15 THE CLERK: You can have a seat.

16 Members of the jury, listen to your verdict sa it
17 stands recorded, you say through the foreperson, you and
18 each of you find the defendant Mark Orlando guilty of
19 the count of Murder in the Second Degree.

20 So say you all.

21 (Whereupon, the jury collectively answered in the
22 affirmative.)

23 THE COURT: Mr. Lemke, do you want the jury
24 polled?

25 MR. LEMKE: Yes, Your Honor.

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1 THE CLERK: Poll them one by one.

2 Juror number one, is that your verdict?

3 A JUROR: Yes.

4 THE CLERK: Juror number two, is that your
5 verdict?

6 A JUROR: Yes.

7 THE CLERK: Juror number three, is that your
8 verdict?

9 A JUROR: Yes.

10 THE CLERK: Juror number four, is that your
11 verdict?

12 A JUROR: Yes.

13 THE CLERK: Juror number five, is that your
14 verdict?

15 A JUROR: Yes.

16 THE CLERK: Juror number six, is that your
17 verdict?

18 A JUROR: Yes.

19 THE CLERK: Juror number seven, is that your
20 verdict?

21 A JUROR: Yes.

22 THE CLERK: Juror number eight, is that your
23 verdict?

24 A JUROR: Yes.

25 THE CLERK: Juror number nine, is that your

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1 verdict.

2 A JUROR: Yes.

3 THE CLERK: Juror number ten, is was that your
4 verdict?

5 A JUROR: Yes.

6 THE CLERK: Juror number eleven, is that your
7 verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror number twelve, is that your
10 verdict.

11 A JUROR: Yes.

12 THE CLERK: Jury verdict has been confirmed.

13 THE COURT: Ladies and gentlemen of the jury,
14 I want to commend you for your service on behalf of both
15 attorneys. I want to thank you. In a few minutes the
16 court officer will take you back to the jury room. So
17 you can gather your belongings. You will then be free
18 to return to your home and. Before you go, I would like
19 to thank you for the service you have given. You have
20 taken on a very difficult task of judging a fellow human
21 being. You have done so admirably.

22 When you announced your verdict you spoke with the
23 same force as an elected judge. Indeed you're the
24 judges of the facts of this case. You're formally
25 discharged from further jury service at this time for

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1 the next four years.

2 The admonition I previously gave you no longer
3 apply, and you may now talk to anyone you wish about the
4 case, and go anywhere you wish to go. When you leave
5 the lawyers may wish to talk to talk to you. The choice
6 is yours. If you want to talk to them you can. If not
7 you don't have to.

8 Again, I want to thank very much for your patience,
9 your diligence, and your service.

10 Thank you.

11 THE COURT OFFICER: Jurors, please follow me
12 out.

13 (Whereupon, the following takes place outside
14 the presence of the jury.)

15 THE CLERK: Mr. Lemke, you reserve your right
16 to any motions at the time of sentencing.

17 MR. LEMKE: Yes, Your Honor.

18 THE COURT: Court orders a presentence
19 report. The defendant bail's status is remand.

20 THE CLERK: Yes.

21 THE COURT: Bail status, remand, we will
22 continue, Mr. Lemke. Week of July 25th.

23 MR. LEMKE: Fine, Your Honor, that Friday.

24 THE COURT: What day is that Friday?

25 THE CLERK: July 29th.

Proceedings

1 THE COURT: Sentencing July 29, 2005. You may
2 take the defendant.

3 * * * *

4 This is to certify that the foregoing is a true and
5 accurate copy of the transcript of the proceedings.

6 Mary Ocskai
7 Senior Court Reporter
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